

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

TAYLOR INVESTMENT
PARTNERS II, LLC, et al.

Debtors.

CHAPTER 11

CASE NO.: 15-51333-MHM
Jointly Administered

**OPPOSITION OF MOE'S FRANCHISOR LLC
TO DEBTORS' MOTION TO DISMISS BANKRUPTCY CASES AND
IN SUPPORT OF MOTION FOR APPOINTMENT OF A TRUSTEE**

Moe's Franchisor LLC ("Moe's") opposes the dismissal of these bankruptcy cases sought by Debtors (Dkt. No. 119) and reaffirms that the appointment of a trustee is warranted (Dkt. No. 111).

Confirmed by the testimony of Mark Monroe at the initial hearing on Moe's trustee appointment motion on September 8, 2015, an offer of \$1.2 million has been made to the Debtors for their two Moe's restaurants. That offer is 20% more than the \$1 million value which the Debtors themselves placed on the franchises in the Schedule B filed by Taylor Investment Partners II, LLC (Dkt. No. 39).

At the hearing and in the dismissal motion, the Debtors complain that Moe's is seeking to enforce a "fire sale" of the franchises. If an offer of 20% more than the market value placed by the Debtors themselves in their Schedules, signed under oath, signifies a "fire sale", then it is Debtors that should be called to explain the valuation, provided under oath and upon which this Court and all creditors are expected to rely.

The Debtors jumped into bankruptcy to avoid a termination of the Decatur franchise. Moe's was willing to permit a sale, but the Debtors have refused. The Debtors should not now be permitted to jump out of bankruptcy just because the Debtors now find convenience in avoiding oversight.

There are two developments about which Moe's advises this Court in conjunction with its further consideration of the trustee appointment motion and the dismissal motion.

First, while the Debtors disclosed the existence of the so-called "Massey Litigation", in which Debtors and other current and/or former Moe's franchisees sought damages against Moe's predecessor, and its affiliates and officers (Moe's as successor to the Moe's Southwest Grill brand was not a defendant), the Debtors never disclosed, at any time, the existence of any claims asserted against Debtors in that litigation or any risk that the defendants in that litigation were creditors of the Debtors.

However, on September 30, 2015, pursuant to a motion pending against Debtors since February 17, 2015 (Exhibit 1), judgment was entered against Debtors in the amount of \$116,411.29 (Exhibit 2).

At the hearing on the trustee appointment motion on September 8, 2015 certainly Debtors (although perhaps not Debtors' counsel) were aware of the contingent liability and claims being pursued against them by the "Massey" defendants. Rather than so disclose to this Court, representations were made that the Debtors had essentially addressed all of the claims that existed against them. Pursuant to the Judgment, Debtors have joint and several liability in the amount of \$116,411.29. Such liability is a material and significant sum in respect of the Debtors' assets, especially given their modest cash resources.

Debtors should be required to answer whether, in anticipation of such a judgment being entered against them, their desire to “jump out” of bankruptcy now, at least in part, is an effort to frustrate those judgment creditors.

Another development is that Moe’s itself on October 1, 2015 filed a Complaint against the Debtors, in the United States District Court for the Northern District of Georgia for declaratory and equitable relief, to enjoin the Debtors from continuing to operate as a Moe’s franchisee when their franchise rights have terminated. A copy of that Complaint (without exhibits) is attached as Exhibit 3. Given the Debtors’ recalcitrance to sell, despite Moe’s willingness to permit opportunity after opportunity, Moe’s now seeks to shut the Debtors down.

The preservation of value for the Debtors and their creditors, including the recent judgment creditors, can only occur with a trustee appointment. Debtors have shown that only a trustee can meet the obligations that the Debtors have promised to assume, but have failed to perform, in the voluntary filing of their bankruptcy cases.

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/s/ Mark J. Friedman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2015, a copy of the foregoing Opposition of Moe's Franchisor LLC to Debtors' Motion to Dismiss Bankruptcy Cases and in Support of Motion for Appointment of a Trustee was served on all parties listed below by first-class mail, unless said party is a registered CM/ECF participant and the Notice of Electronic Filing indicates that notice was electronically mailed to said party.

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